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May 15, 2014

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OFFICE OF GENERAL  
COUNSEL  
p/540-341-8809

**Re: Response of Sue Lowden and Sue Lowden for U.S. Senate to MUR 6771**

Dear Ms. Stevenson,

This Response is submitted by the undersigned counsel on behalf of Sue Lowden and Sue Lowden for U.S. Senate in response to the Complaint designated as Matter Under Review 6771. Sue Lowden for U.S. Senate (the "Committee"), is the federally registered principal campaign committee (FEC Committee ID C00467761) of former United States Senate candidate Sue Lowden. The Committee is currently in the process of termination and, prior to the filing of this Complaint, the Committee submitted seventeen (17) Amended FEC Quarterly Reports as well as a comprehensive Debt Settlement Plan. The Committee hopes that this matter can be resolved expeditiously, and that the Commission will process the prior termination request as soon as possible.

## **Background**

The central allegation in the Complaint is that the Committee did not report a certain outstanding debt allegedly owed to Vitale & Associates, LLC. The existence of this alleged debt is currently the subject of litigation before the United States District Court in Nevada. (It is unclear whether the Complainant has an interest in the outcome of the litigation, and his particular interest in this matter in general is not known.) Vitale & Associates, LLC, contends that it provided certain polling services to the Committee; the Committee contends that these services were never requested or contracted for.

The allegations contained in the Complaint are based entirely on media reports of the plaintiff's allegations; there is no legal determination that any contract existed between Vitale & Associates, LLC, and the Committee. It is the Committee's contention that no contract existed in connection with the alleged debt. It is undisputed that no written contract exists between the Committee and Vitale & Associates, LLC and the alleged existence of an oral or implied contract is currently being litigated.

Despite this ongoing litigation, the Committee nevertheless reported a "disputed debt" in the amount of \$77,796.88 alleged owed to Vitale & Associates, LLC, to the Commission in an

amendment to its June 2010 Quarterly Report filed in January 2014. This amendment was submitted as part of the Committee's ongoing efforts to obtain approval for its Debt Settlement Plan and termination of the Committee.

### Analysis

While the Committee has now included the aforementioned "disputed debt" in its reports and Debt Settlement Plan, we do not believe this dispute constitutes a debt that is required to be reported to the Commission as a "disputed debt." (The Committee has reported it to the Commission as a "disputed debt" simply to expedite the termination of the Committee.)

Mrs. Lowden and the Committee contend that no payment is due to Vitale because neither an express nor implied contract was entered into for the performance of the polling services Vitale claims were provided. While the existence of a contract is not a matter over which the Commission has jurisdiction, the matter is relevant to the reporting provisions that concern disputed debts. Commission regulations appear to presume a contractual relationship exists between the political committee and the vendor, and that the "dispute" between the parties is simply a matter of amount. See 11 C.F.R. § 116.10(a) ("A political committee shall report a disputed debt ... if the creditor has provided something of value to the political committee.") Commission regulations define "disputed debt" as "an actual or potential debt or obligation owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the political committee." 11 C.F.R. § 116.1(d). This provision refers specifically to "a written contract, promise or agreement to make an expenditure" and "a bona fide disagreement between the creditor and the political committee." The Complainant also cites to page 101 of the Federal Election Commission Campaign Guide, which provides that "[d]ebts and obligations must be reported continuously until paid. Unpaid bills and written contracts or agreements to make expenditures are considered debts." Again, this language refers to the existence of a valid "written contract or agreement to make expenditures." Here, no such contract or agreement ever existed. For that reason, at the time this matter first arose with Vitale & Associates, LLC, the Committee reasonably believed the alleged debt was not reportable to the Commission as a "disputed debt" pursuant to 11 C.F.R. § 116.10.

By the time Vitale & Associates, LLC, filed the aforementioned lawsuit over the alleged debt, in August 2012, the 2010 election in which Mrs. Lowden was a candidate was long over and her campaign had disbanded. As the various amended reports filed in January 2014 attest, the Committee struggled to meet its reporting obligations. After this firm was retained in August 2013 to review the Committee's past filings, the existence of the lawsuit became known and it was determined, out of an abundance of caution, that that lawsuit elevated the issue to a "bona fide disagreement" that could fall within 11 C.F.R. § 116 *et seq.* Accordingly, the amount at issue was reported as "disputed debt" on amendments filed in January 2014. (The Committee does not acknowledge any liability, or in any way concede that any valid contract existed between it and Vitale & Associates, LLC, or that the Committee has ever been obligated to pay the sum at issue to Vitale & Associates, LLC.)

Following a comprehensive legal and financial audit lasting approximately six months, the Committee submitted seventeen (17) Amended FEC Quarterly Reports and a new comprehensive Debt Settlement Plan to the Secretary of the Senate for filing with the FEC on January 14, 2014. As noted above, the amended July 2010 Quarterly Report, and all subsequent reports, include the alleged "dispute debt" of \$77,796.88 to Vitale and Associates, LLC with the notation "Disputed debt -- currently in litigation in NV Federal Court." These amendments were made prior to the Committee's receipt of this Complaint, and were prepared and submitted as part of an effort to file a comprehensive Termination Report and Debt Settlement Agreement.

As explained above, the Committee initially believed, reasonably, that the alleged "disputed debt" at issue was not reportable to the Commission as a disputed debt for purposes of 11 C.F.R. § 116.10. Subsequently, the Committee chose to report the matter to the Commission as a "disputed debt" as part of its efforts to terminate. In its most recent quarterly filing (April 2014), the Committee reported \$0 cash on hand, and outstanding debts of \$632,141.56. The Committee does not have the ability to pay a civil penalty. In light of the corrective actions already taken, we respectfully request that the Commission dismiss this matter and approve the Committee's termination request.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Torchinsky", with a long horizontal flourish extending to the right.

Jason Torchinsky  
Michael Bayes  
Lauren Battey  
Counsel for Sue Lowden and Sue Lowden  
for U.S. Senate